PP v. MOHD DZAHIR AHMAD

COURT OF APPEAL, PUTRAJAYA
BALIA YUSOF WAHI JCA
ROHANA YUSUF JCA
TENGKU MAIMUN TUAN MAT JCA
[CRIMINAL APPEAL NO: K-05-23-01-2013]
30 DECEMBER 2014

CRIMINAL LAW: *Dangerous Drugs Act 1952 – Offence of trafficking – Accused person acquitted and discharged – Appeal against – Drugs found in house frequented by other persons – Defence of no knowledge – Whether reasonable doubt cast on prosecution's case – Whether Judicial Commissioner ('JC') erred when re-evaluating on issue of possession – Whether JC considered and evaluated defence evidence sufficiently – Whether there was failure to establish prima facie case against accused person – Whether JC's judgment should be upheld – Whether accused person entitled to order of acquittal and discharge*

CRIMINAL PROCEDURE: *Appeal – Appeal against acquittal and discharge – Offence of trafficking in dangerous drugs – Drugs found in house frequented by other persons – Defence of no knowledge – Whether reasonable doubt cast on prosecution's case – Whether Judicial Commissioner ('JC') erred when re-evaluating on issue of possession – Whether JC considered and evaluated defence evidence sufficiently – Whether there was failure to establish prima facie case against accused person – Whether JC's judgment should be upheld – Whether accused person entitled to order of acquittal and discharge*

The respondent was charged for an offence of trafficking in 1109.63g of cannabis, a dangerous drug under the Dangerous Drugs Act 1952 ('the Act'). A police team headed by SP1 had conducted a search on a house occupied by the respondent and found several transparent plastic packets containing slabs of dried leaves on a table and in its drawers. These items were seized and the respondent was arrested. The government chemist confirmed the slabs of dried leaves were cannabis. It was suggested by the defence that the respondent had no knowledge of the drugs found in the house and that it could belong to others who had access to the house as there were two other persons alleged to have a set of keys to the said house. At the end of the prosecution's case, the Judicial Commissioner ('JC') had found that no *prima facie* case was established against the respondent and accordingly acquitted and discharged him without calling for the defence. The Public Prosecutor appealed against the said order ('the first appeal'). The Court of Appeal ruled that a *prima facie* case had been established and ordered the matter be remitted to the High Court for the respondent to enter his defence. In the respondent's defence, he stated that he had rented the house from one Nawawi. He further testified that he had two employees, Azril and Mohd Fawaz ('SB2'), who came to do their work at the house. According to the respondent, the

impugned drugs were found in a bag on a table where Azril did his work. As to the whereabouts of Azril, the respondent stated that Azril had gone missing and was untraceable. SB2 was called as the second defence witness who confirmed that Azril's place of work was at the table where the bag containing the impugned drugs were found. SB2 confirmed that on the day in question, Azril was at the house and was working at the said table. The JC thus concluded that the respondent had successfully cast a reasonable doubt on the prosecution's case and ordered him to be acquitted and discharged. Hence, this second appeal by the prosecution against the respondent. The grounds raised herein were (i) whether the JC had misdirected himself in re-evaluating the prosecution's case on the issue of whether there was a *prima facie* case; and (ii) whether the JC had failed to evaluate the defence.

Held (dismissing appeal; affirming order of acquittal and discharge)
Per Balia Yusof Wahi JCA delivering the judgment of the court:

(1) The Deputy Public Prosecutor ('DPP') specifically referred to paras. 9 and 10 of the JC's grounds of judgment which was said to be a re-evaluation on the issue of possession. According to the DPP, the JC had erred in doing so because in allowing the first appeal against the order of acquittal and discharge, the Court of Appeal had been satisfied that a *prima facie* case had been established against the respondent, which necessarily entailed that possession was proven by the prosecution. Without possession being first established, there could be no *prima facie* case of trafficking. This court, however, found that the said two paragraphs were nothing more than a mere restatement of the law on possession. The JC was merely repeating what the court had stated as to what possession meant in law as explained in the two cases of *PP v. Puvaneswaran* and *Chan Pean Leon v. PP*. Thus, the complaint on the first issue was dismissed. (paras 14-17)

(2) The JC had directed his mind not only to the evidence of the respondent but that of SB2 and SB3, the third witness for the defence and the respondent's neighbour, who had testified that he had seen several people coming in and out of the house. The JC's conclusion was not one which was unsupported by evidence but one which was not sufficiently explained and reasoned out. It may not be the best judgment but it had the basic structure and feature of a judgment which was sufficient to support the finding and conclusion reached by the JC. The JC had considered and evaluated the defence evidence sufficiently in coming to his decision. The judgment of the JC in the instant appeal may still be upheld. The approach taken by the DPP in challenging the judgment of the JC was without merits. The second complaint was therefore dismissed. (paras 23-24, 31, 35 & 36)

(3) The JC found that the respondent had raised a reasonable doubt on the prosecution's case entitling him to be freed of the charge against him. His Lordship had however omitted to consider whether the respondent had also rebutted the presumption of trafficking as a separate exercise. The offence of trafficking in dangerous drugs on the facts and circumstances of this case must have been attributed to the quantity of the drugs found in his possession which attracted the invocation of s. 37(da) presumption. The failure of the JC to make such finding was in breach of the pronouncement made in *Mohd Radhi Yaakob v. Public Prosecutor*. Considered separately and apart from the issues discussed above, this may very well be a ground favourable to the respondent which also entitled him to an order of acquittal and discharge.

Bahasa Malaysia *Translation Of Headnotes*

Responden telah dipertuduh di bawah kesalahan mengedarkan dadah iaitu 1109.63g kanabis, dadah berbahaya di bawah Akta Dadah Berbahaya 1952 ('Akta'). Satu pasukan polis yang diketuai oleh SP1 telah mengendalikan satu carian di sebuah rumah yang diduduki responden dan telah mendapati beberapa bungkus plastik lutsinar yang mengandungi kepingan daun-daun kering di atas sebuah meja dan di dalam laci meja tersebut. Barang-barang tersebut telah dirampas dan responden ditahan. Ahli kimia kerajaan telah mengesahkan kepingan daun-daun kering tersebut sebagai kanabis. Pihak pembelaan menghujahkan bahawa responden tidak mempunyai pengetahuan berkenaan dadah-dadah yang ditemui dalam rumah dan bahawa ia mungkin dimiliki oleh orang lain yang mempunyai akses kepada rumah tersebut kerana terdapat dua orang lain yang mempunyai kunci rumah tersebut. Di akhir kes pendakwaan, Pesuruhjaya Kehakiman ('PK') telah mendapati bahawa tiada kes *prima facie* dibuktikan terhadap responden dan telah membebaskan dan melepaskannya tanpa memanggil pembelaan. Pendakwa Raya telah merayu terhadap perintah tersebut ('rayuan pertama'). Mahkamah Rayuan mendapati bahawa kes *prima facie* telah terbukti dan memerintahkan agar perkara ini diremit ke Mahkamah Tinggi untuk responden memasukkan pembelaannya. Dalam pembelaan responden, dia menyatakan bahawa dia telah menyewa rumah tersebut daripada seorang yang bernama Nawawi. Dia juga menghujahkan bahawa dia mempunyai dua pekerja, Azril dan Mohd Fawaz ('SB2'), yang ke rumah tersebut untuk bekerja. Menurut responden, dadah-dadah tersebut telah dijumpai di dalam sebuah beg di atas meja di mana Azril membuat kerjanya. Tentang di mana Azril berada, responden menyatakan bahawa Azril telah menghilangkan diri dan tidak dapat dikesan. SB2 dipanggil sebagai saksi pembelaan kedua yang mengesahkan bahawa tempat Azril membuat kerja adalah di meja di mana beg yang mengandungi dadah-dadah tersebut dijumpai. SB2 mengesahkan bahawa pada hari kejadian itu, Azril berada di rumah tersebut dan telah bekerja di meja tersebut. PK dengan itu membuat kesimpulan bahawa responden telah berjaya menimbulkan keraguan yang munasabah ke atas kes pendakwaan dan memerintahkan supaya responden dilepaskan dan dibebaskan. Oleh itu,

rayuan kedua oleh pihak pendakwaan terhadap responden. Alasan-alasan yang telah dibangkitkan adalah (i) sama ada PK telah tersalah arah apabila menilai semula kes pendakwaan berkenaan isu sama ada terdapat kes *prima facie;* dan (ii) sama ada PK telah gagal menaksir pembelaan.

Diputuskan (menolak rayuan; mengesahkan perintah pelepasan dan pembebasan)

Oleh Balia Yusof Wahi HMR menyampaikan penghakiman mahkamah:

(1) Timbalan Pendakwa Raya ('TPR') secara khususnya merujuk kepada perenggan 9 dan 10 alasan penghakiman PK yang didakwa telah menilai semula isu milikan. Menurut TPR, PK telah terkhilaf apabila berbuat demikian kerana dalam membenarkan rayuan pertama terhadap perintah pelepasan dan pembebasan, Mahkamah Rayuan telah berpuas hati bahawa satu kes *prima facie* telah dibuktikan terhadap responden, yang semestinya menunjukkan bahawa milikan telah dibuktikan oleh pihak pendakwaan. Tanpa milikan dibuktikan terlebih dahulu, tidak mungkin kes *prima facie* pengedaran dadah dibuktikan. Mahkamah ini, walau bagaimanapun, mendapati bahawa kedua-dua perenggan tersebut hanya penyataan semula undang-undang milikan. PK hanya mengulang semula apa yang dinyatakan berkenaan milikan dari segi undang-undang seperti yang dijelaskan dalam dua kes iaitu *PP v. Puvaneswaran* dan *Chan Pean Leon v. PP*. Dengan itu, aduan berkenaan isu pertama ini ditolak.

(2) PK telah mengarahkan mindanya bukan hanya kepada keterangan responden tetapi juga kepada keterangan yang diberikan oleh SB2 dan SB3, saksi ketiga bagi pihak pembelaan dan jiran responden, yang telah memberi keterangan bahawa dia telah melihat beberapa orang keluar masuk rumah tersebut. Kesimpulan PK disokong oleh keterangan tetapi tidak diperjelaskan atau diberi alasan dengan sepenuhnya. Ia mungkin bukan penghakiman yang terbaik tetapi ia mempunyai struktur asas dan ciri penghakiman yang memadai untuk menyokong dapatan dan kesimpulan yang dibuat oleh PK. PK telah mempertimbangkan dan menilai keterangan pembelaan dengan secukupnya apabila membuat keputusannya. Penghakiman PK dalam rayuan ini masih boleh dikekalkan. Pendekatan yang diambil oleh TPR dalam membantah penghakiman PK adalah tanpa merit. Oleh itu, aduan kedua ditolak.

(3) PK mendapati bahawa responden telah membangkitkan keraguan munasabah ke atas kes pendakwaan yang memberikan hak kepada responden untuk dibebaskan dari pertuduhan terhadapnya. Yang Arif, walau bagaimanapun, tidak mempertimbangkan sama ada responden juga telah menyangkal anggapan pengedaran sebagai langkah yang berasingan. Kesalahan pengedaran dadah berbahaya atas fakta dan keadaan kes ini mesti dikaitkan dengan kuantiti dadah yang ditemui dalam milikannya yang telah membangkitkan anggapan s. 37(da). Kegagalan PK untuk membuat dapatan tersebut telah melanggar pengisytiharan yang dibuat dalam kes *Mohd Radhi Yaakob v. PP*.

Dipertimbangkan secara berasingan dan selain daripada isu-isu yang dibincangkan di atas, ini mungkin satu alasan yang memihak kepada responden yang juga memberikan hak kepadanya untuk mendapatkan perintah pelepasan dan pembebasan.

Case(s) referred to:
Arulpragasan Sandaraju v. PP [1996] 4 CLJ 597 FC ***(refd)***
Balasingham v. PP [1959] 1 LNS 8 HC ***(refd)***
Chan Pean Leon v. PP [1956] 1 LNS 17 ***(refd)***
Ganapathy Rengasamy v. PP [1998] 2 CLJ 1 FC ***(dist)***
Looi Kow Chai & Anor v. PP [2003] 1 CLJ 734 CA ***(refd)***
Mohamad Radhi Yaakob v. PP[1991] 3 CLJ 2073; [1991] 1 CLJ (Rep) 311 SC ***(refd)***
Mohamed Mokhtar v. PP [1971] 1 LNS 84 HC ***(refd)***
Nagappan Kuppusamy v. PP [1988] 1 CLJ 283; [1988] 1 CLJ (Rep) 229 SC ***(refd)***
Ouseng Sama-Ae v. PP [2010] 6 CLJ 416 CA ***(refd)***
PP v. Kasmin Soeb [1974] 1 LNS 116 HC ***(refd)***
PP v. Mohd Radzi Abu Bakar [2006] 1 CLJ 457 FC ***(refd)***
PP v. Puvaneswaran [2003] 4 CLJ 609 ***(refd)***
Rex v. Low Toh Cheng [1941] 1 MLJ 1 ***(dist)***
Tai Chai Keh v. PP [1948] 1 LNS 122 CA ***(refd)***

Legislation referred to:
Dangerous Drugs Act 1952, s. 37(da)

For the appellant - Kwan Li Sa; DPP
For the respondent - G Ravishankar; M/s R Shankar Gandhi & Assocs

[Appeal from High Court, Alor Setar; Criminal Trial No: 45-12-2008]

Reported by Suhainah Wahiduddin

JUDGMENT

Balia Yusof Wahi JCA:

[1] The respondent was charged for an offence of trafficking in 1109.63g of cannabis, a dangerous drug under the Dangerous Drugs Act 1952 (the Act).

[2] The brief facts of the case show that a police team led by Chief Inspector Mohd Hisham bin Abdul Rahman (SP1) went to a house at Kampong Borhan, Alor Setar. Upon arrival at the house, SP1 found the main door locked. He went to one of the windows of the house and called out for the occupant while identifying himself as a police officer. The respondent came from the back room and opened the door. SP1 and his team then entered the house.

[3] SP1 reintroduced himself as a police officer and conducted a body search on the respondent but nothing incriminating was found. SP1 then searched the house. He found a red zipped bag (P16) on a table and upon opening the same, found two transparent plastic packets containing slabs of

dried leaves suspected to the drugs. He then opened the back zip of the bag and found another two transparent plastic packets containing slabs of dried leaves also suspected to be drugs. On the same table, there was another transparent plastic packet containing dried leaves. Underneath the same table, there was a small table with four drawers. In the first drawer, SP1 found a transparent plastic packet containing dried leaves. From the second drawer, he found a blue plastic packet also containing a slab of dried leaves. Apart from that, SP1 and his team also found a piece of plastic board, knives, scissors and a weighing machine in the house. These items were seized and the respondent was arrested. There was no one else in the house beside the respondent.

[4] The government chemist, SP6 confirmed the slabs of dried leaves were found to be 1109.63g of cannabis.

[5] In the course of the prosecution's case, it was suggested by the defence that the respondent had no knowledge of the drugs found in the house and that it could belong to others who had access to the house. At least two other persons were alleged to have a set of keys to the house.

[6] At the end of the prosecution's case, the learned Judicial Commissioner (JC) had found no *prima facie* case was established against the respondent and accordingly acquitted and discharged him without calling for the defence.

[7] On appeal by the Public Prosecutor against the said order of acquittal and discharge (the first appeal), the Court of Appeal had ruled that a *prima facie* case had been established and ordered the matter to be remitted to the High Court for the respondent to enter his defence.

[8] In his defence, the respondent stated that he rented the house from one, Nawawi. A friend stayed with him but left sometime later. He further testified that he had two employees, Azril and Mohd Fawaz who came to do their work at the house. The respondent runs a business of doing advertising and advertising board as a subcontractor. Mohd Fawaz does the house cleaning work while Azril does his work of keeping and preparing the respondent's business account and documentation. Each of them had a set of keys to the house. They normally work in the house from morning to about 12 noon. On the day in question, the respondent said he woke up late. When the police team came, he was alone in the house. At times, Azril used to sleep in the house and brought his friends along. The impugned drugs were found in a bag on a table where Azril does his work. As to the whereabouts of Azril, the respondent stated that Azril has gone missing and was untraceable.

[9] Mohd Fawaz (SB2) was called as the second defence witness who came to testify that he does house cleaning job in the respondent's house and confirm that Azril also worked in the house. Azril's place of work was at the

table where the bag containing the impugned drugs were found. This witness confirmed that on the day in question, when he left the house after finishing his work at about between 11.45am to 12 noon, the respondent was still sleeping. He further stated that Azril was at the house on that day and Azril was still working at the table when he left the house. SB2 also confirmed that both he and Azril had a set of keys to the said house.

[10] Rahmat b. Abd Razak (SB3) was another witness called by the defence. SB3 stayed in a neighbouring house next to the respondent's. He knew the respondent and used to see other people coming to the respondent's house.

[11] Having considered the defence case, the learned JC concluded that the respondent had successfully cast a reasonable doubt on the prosecution's case and ordered him to be acquitted and discharged.

[12] This is the second appeal by the prosecution against the respondent.

The Appeal

[13] Two grounds were raised by the learned Deputy Public Prosecutor in attacking the decision of the learned JC. Firstly, it was contended that the learned JC had misdirected himself in re-evaluating the prosecution's case on the issue of whether there was a *prima facie* case and secondly, on the failure of the learned JC to evaluate the defence.

[14] On the first issue, the learned Deputy Public Prosecutor specifically referred to paras. 9 and 10 of the learned JC's grounds of judgment which she said was a re-evaluation on the issue of possession. To borrow her own words, the learned Deputy Public Prosecutor said "the learned JC was wrong in revisiting the issue of possession". The said paras. 9 and 10 are set out below:

> [9] Bagi membuktikan OKT melakukan kesalahan di bawah s. 39A(1)(a) ini pihak pendakwa perlu membuktikan OKT mempunyai pemilikan ke atas dadah berbahaya tersebut. Di dalam kes *PP lwn. Puvanaswaran Kaniapan* [2003] 4 CLJ 609, Hakim Augustine Paul J (beliau pada masa itu) juga telah menegaskan pada muka surat 623:
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> > Pihak pendakwaan terlebih dahulu perlu membuktikan bahawa tertuduh mempunyai pemilikan ke atas dadah tersebut sebelum isu pengedaran berkenaan bahan yang sama boleh dibangkitkan untuk pertimbangan. Pembuktian kedua-dua isu ini boleh dibuat menerusi keterangan langsung ataupun melalui anggapan yang diperuntukkan di bawah Akta tersebut.
>
> [10] Pemilikan di dalam undang-undang jenayah melibatkan dua perkara penting iaitu pertamanya kawalan dan jagaan ke atas dadah berbahaya tersebut dan keduanya mempunyai pengetahuan tentang dadah tersebut. Ini telah dijelaskan di dalam kes *Chan Pean Leon v. PP* [1956] MLJ 237. Thomson J. di dalam kes tersebut mengatakan pada muka surat 239:

> Of course there can be no possession without knowledge and there can be no possession without some power of disposal but an essential ingredient of all possession is that there must be an intention as owner in case of need to exercise that power to exclusion of other persons

[15] It was submitted that the learned JC had erred in so doing because in allowing the first appeal against the order of acquittal and discharge, the Court of Appeal must have been satisfied that a *prima facie* case had been established against the respondent. And this must necessarily entail that possession had been proven by the prosecution. Without possession being first established, there can be no *prima facie* case of trafficking. The case of *Ouseng Sama-Ae v. PP* [2010] 6 CLJ 416; [2011] 4 MLJ 756 was cited.

[16] We have considered the said paras. 9 and 10 referred to by the learned Deputy Public Prosecutor and we found that the said two paragraphs are nothing more than a mere restatement of the law on possession. The learned JC was merely repeating what the court had stated as to what possession means in law as explained in the said two cases of *PP v. Puvaneswaran* (*supra*) and the oft quoted case of *Chan Pean Leon v. PP* (*supra*).

[17] We found the submissions to be lacking in merit and the complaint on the first issue must be dismissed.

[18] On the learned JC's evaluation of the defence we found the correct approach was undertaken by His Lordship where it was stated in para. 13 of the judgment that:

> [13] Di akhir sesuatu kes mahkamah perlu mempertimbangkan keseluruhan keterangan yang dikemukakan di dalam kes tersebut untuk memutuskan samada pihak pendakwa telah membuktikan kes terhadap OKT melampaui keraguan yang munasabah seperti yang diperuntukkan di dalam s. 182A(1) Kanun Tatacara Jenayah.

[19] Indeed, it was incumbent upon the learned JC to do so.

[20] In *Nagappan Kuppusamy v. Public Prosecutor* [1988] 1 CLJ 283; [1988] 1 CLJ (Rep) 229; [1988] 2 MLJ 53 the Supreme Court had stated at p. 231 (CLJ); p. 54 (MLJ):

> In a criminal proceeding, the onus on the prosecution throughout is to prove beyond reasonable doubt. From the beginning to the end, the burden remains on the prosecution to prove the guilt of the accused. At the close of the whole case, the court has to consider all the evidence adduced by both the prosecution and the defence and has to be satisfied that the case has been proved beyond reasonable doubt.
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> In other words, at the close of the whole case, the court has to consider all the evidence before it whether they satisfy all the ingredient of the offence. If upon the whole evidence the court is left in a real state of doubt, the prosecution is said to have failed to satisfy the onus of proof which lies upon it.

(See also: *Arulpragasan Sandaraju v. Public Prosecutor* [1996] 4 CLJ 597; [1997] I MLJ I)

[21] In submitting that the learned JC had failed to evaluate the defence, the learned Deputy Public Prosecutor, Ms Kwan Li Sa, suggested that there was a failure on the part of the learned JC to discuss the evidence of the other two defence witnesses, SB2 and SB3. It was further contended that paras. 14-16 of the grounds of judgment do not reflect the learned JC's evaluation of the defence.

[22] For ease of reference, we set below paras. 14-16 of the judgment which read as follows:

> [14] Setelah mempertimbangkan kesemua keterangan yang dikemukakan saya dapati terdapat keraguan yang jelas tentang intipati pemilikan dadah berbahaya tersebut oleh OKT. Keterangan yang dikemukakan boleh menimbulkan beberapa inferens tentang pemilikan dadah tersebut. Di antara inferens yang boleh dibuat ialah dadah tersebut berada di dalam pemilikan OKT berasaskan OKT penyewa rumah tersebut dan barang-barang beliau di temui di situ. Kemungkinan ini juga boleh diasaskan kepada fakta pada masa dadah ditemui hanya OKT berada di dalam rumah tersebut.
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> [15] Bagaimana pun keterangan saksi-saksi pembelaan dan keterangan saksi pendakwa sendiri juga boleh menimbulkan inferens lain iaitu dadah tersebut mungkin juga diletakkan oleh orang lain samada dengan pengetahuan OKT atau tanpa pengetahuan OKT. Di dalam keadaan sedemikian dadah tersebut tidak berada di dalam pemilikan OKT.
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> [16] Berasaskan wujudnya lebih dari satu inferens, inferens yang memihak kepada OKT, iaitu dadah tersebut tidak berada di dalam pemilikan OKT terpakai. Oleh itu saya dapati pembelaan OKT telah berjaya menimbulkan keraguan yang munasabah ke atas kes pendakwa dan pihak pendakwa telah gagal membuktikan kes terhadap OKT melampaui keraguan yang munasabah OKT dilepas dan dibebaskan.

[23] Before coming to the conclusion in the above mentioned paragraphs, we pause to note that the learned JC had earlier directed his mind not only to the evidence of the respondent but that of SB2 and SB3 too. We feel constrained to reproduce what the learned JC had penned in his grounds of judgment on this issue. At para. 3 of the judgment, this is what the learned JC had stated:

> [3] Di dalam pembelaannya OKT telah memberi keterangan bersumpah dan memanggil dua orang saksi lain. Secara ringkasnya keterangan pembelaan OKT dan saksi-saksi beliau menunjukkan rumah tersebut disewa oleh OKT tetapi orang-orang lain termasuk kawan-kawan OKT bebas untuk datang ke rumah tersebut. Keterangan SB2 menunjukkan sebelum kejadian tersebut terdapat seorang lagi yang bekerja dengan OKT di rumah tersebut yang bebas keluar masuk ke rumah itu. SB3 juga mengesahkan terdapat orang-orang lain yang biasa keluar masuk ke rumah sewa OKT.

[24] In our judgment, reading the said paragraph, it leaves no doubt that the evidence of the defence had been duly considered by the learned JC. Perhaps, the only complaint that may be raised against the same is that it was too brief. Be that as it may, we found that what had been stated in that one paragraph is an exact and brief summary of what the defence evidence was. There is no necessity for the learned JC to reproduce or narrate the detailed evidence of witnesses.

[25] We have taken the liberty of summarising the defence evidence in the earlier part of this judgment. In our view, the essence of the defence had been reflected in the learned JC's para. 3 of the judgment.

[26] We found the learned JC had considered and evaluated the defence evidence.

[27] Paragraphs 14-16 of the judgment in our view, summarise the learned JC's findings upon his evaluation of the whole evidence at the end of the case.

[28] We have often stressed that parties to a litigation are entitled to know the basis upon which the conclusion of the tribunal has been reached. And it is undoubtedly desirable that judges when writing their grounds of decision give their findings and the reasons for those findings. (See: *Mohamed Mokhtar v. Public Prosecutor* [1971] 1 LNS 84; [1972] 1 MLJ 122, *Balasingham v. Public Prosecutor* [1959] 1 LNS 8; [1959] 1 MLJ 193).

[29] While it may be true as suggested by the learned Deputy Public Prosecutor that those paragraphs do not reflect the learned JC's evaluation of the defence in the strict sense, our perusal of the same indicated that it is the conclusion reached by the learned JC which must have been made upon his evaluation of the defence evidence. Further, we are of the considered view that the conclusion reached in those three paragraphs is not perverse in the factual matrix of the case. It is trite that when two or more than one inference can be made from a set of facts against an accused person, an inference that is more favourable to him ought to be made. (See: *Tai Chai Keh v. Public Prosecutor* [1948] 1 LNS 122; [1948-1949] MLJ Supp 105, *Public Prosecutor v. Kasmin Soeb* [1974] 1 LNS 116; [1974] 1 MLJ 230, *Looi Kow Chai & Anor v. PP* [2003] 1 CLJ 734, *PP v. Mohd Radzi Abu Bakar* [2006] 1 CLJ 457).

[30] The learned JC's conclusion is not one which is unsupported by evidence but one which is not sufficiently explained and reasoned out. A judgment must always be a reasoned judgment. Failure to give reasons may invite criticisms and the judgment be labelled as a non speaking judgment. The absence of proper reason too, may, in certain circumstances constitute an error of law.

[31] We have given our utmost consideration to the judgment and we are constrained to say that it may not be the best judgment but it has the basic structure and feature of a judgment which we find sufficient to support the

finding and conclusion reached by the learned JC. Reading the same, we are satisfied that the learned JC had considered and evaluated the defence evidence sufficiently in coming to his decision. Unlike the judgments of the courts in *Rex v. Low Toh Cheng* [1941] 1 MLJ 1 and *Ganapathy Rengasamy v. Public Prosecutor* [1998] 2 CLJ 1; [1998] 2 MLJ 577 which contain no semblance of any analysis of the facts and evidence, the judgment of the learned JC in the instant appeal may still be upheld.

[32] In *Rex v. Low Toh Cheng* (*supra*) the grounds of judgment by the Magistrate consist of merely eight lines and was found to be so manifestly inadequate. Terrell Ag CJ however allowed the prosecution's appeal on the ground that having reviewed all the evidence in the case and having formed an opinion of its weight and reliability different from that of the Magistrate, the court has unhesitatingly come to the conclusion that the accused ought to have been convicted.

[33] In *Ganapathy Rengasamy v. Public Prosecutor* (*supra*), the Federal Court had criticised the judgment as far from satisfactory in that they do not convey a 'speaking judgment'. The judgement consist substantially of reproduction of the prosecution witnesses' testimonies in the form of question and answers. The judge had also failed to assess or analyse those testimonies, he merely set them out and presumably accepted them without question. He has not set out the defence with a view to assessing it, nor has he tested the defence by comparing it with the evidence adduced by the prosecution.

[34] A judgment must be read as a whole and one must refrain from reading any judgment by dissecting it into various parts or paragraphs and examining those parts or paragraphs in isolation. Foremost in our consideration is whether or not in substance the judgment manifests the trial judge's consideration of the evidence and the law in coming to his conclusion. On that note, we deemed the approach taken by the learned Deputy Public Prosecutor in challenging the judgment of the learned JC and her submissions on the same to be without merits. In the upshot, we dismissed the complaint.

[35] Before we conclude, there is another aspect of the judgment which merits our comment. The learned JC found the respondent had raised a reasonable doubt on the prosecution's case entitling him to be freed of the charge against him. His Lordship however had omitted to consider whether the respondent had also rebutted the presumption of trafficking as a separate exercise. The offence of trafficking in dangerous drugs on the facts and circumstances of this case must have been attributed to the quantity of the drugs found in his possession namely 1109.63g of cannabis which attracts the invocation of the s. 37(da) presumption.

[36] The failure of the learned JC to make such finding is in breach of the pronouncement made by the Supreme Court in *Mohamad Radhi Yaakob v. Public Prosecutor* [1991] 3 CLJ 2073; [1991] 1 CLJ (Rep) 311; [1991] 3 MLJ

A 169 on the issue of the trial judge's consideration of the defence. This is a serious flaw in the judgment which in our view is a misdirection. Considered separately and apart from the issues discussed above, this may very well be a ground favourable to the respondent which also entitles him to an order of acquittal and discharge.

B **[37]** For the aforesaid reasons, we unanimously dismiss the appeal and the order of acquittal and discharge pronounced by the learned JC is affirmed.

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